



March 1, 2001

Mr. Stephen R. Alcorn  
Assistant City Attorney  
City of Grand Prairie  
P.O. Box 534045  
Grand Prairie, Texas 75053

OR2001-0779

Dear Mr. Alcorn:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144514.

The Grand Prairie Police Department (the "department") received two written requests from the same individual for two categories of information. The first request seeks all records pertaining to charges of official oppression, civil rights violations, and sexual assault allegedly committed by either inmates of the city jail, jail staff, or peace officers. The second request is for information pertaining to a specified murder investigation.

You contend that the release of the information responsive to the first request is governed by section 143.089 of the Local Government Code. Section 143.089 provides for the maintenance of a civil service file and what may be kept in that file:

- (a) The director or the director's designee shall maintain a personnel file on each fire fighter and police officer. The personnel file must contain any letter, memorandum, or document relating to:
  - (1) a commendation, congratulation, or honor bestowed on the fire fighter or police officer by a member of the public or by the employing department for an action, duty, or activity that relates to the person's official duties;

(2) any misconduct by the fire fighter or police officer if the letter, memorandum, or document is from the employing department and if the misconduct resulted in disciplinary action by the employing department in accordance with this chapter; and

(3) the periodic evaluation of the fire fighter or police officer by a supervisor.

(b) A letter, memorandum or document relating to alleged misconduct by the fire fighter or police officer may not be placed in the person's personnel file if the employing department determines that there is insufficient evidence to substantiate the charge of misconduct.

(c) A letter, memorandum, or document relating to disciplinary action taken against the fire fighter or police officer or to alleged misconduct by the fire fighter or police officer that is placed in the person's personnel file as provided by subsection (a)(2) shall be removed from the employee's file if the commission finds that:

(1) the disciplinary action was taken without just cause; or

(2) the charge of misconduct was not supported by sufficient evidence.

Information that subsections 143.089(b) and (c) prohibit from being placed in the civil service file may be maintained in the department's internal file, as provided in section 143.089(g). This subsection provides:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

The department may keep information in this separate, internal file for its own use. Section 143.089(g) makes records kept in the department's internal file confidential. *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946. (Tex. App.--Austin 1993, writ denied) On the other hand, information in a police officer's civil service file must be released upon written permission of the police officer or as required by law. *Id.* § 143.089(f). Information in the civil service file must be released if chapter 552 of the Government Code requires its release. Open Records Decision No. 562 at 5-6 (1990).

You have submitted to this office as responsive to the first request, three unrelated internal affairs investigations intended to represent the requested records as a whole. In two of these internal affairs investigations, the allegations against the police officer in question were determined to be "unfounded." We therefore agree that these files are properly maintained in the police department's internal personnel files and must be withheld from the public pursuant to section 143.089(g) of the Local Government Code.

The third investigation resulted in a written reprimand and the requirement of additional training. Section 143.089(a)(2) requires disciplinary records being placed in the civil service file only "if the misconduct resulted in disciplinary action by the employing department *in accordance with this chapter.*" (Emphasis added.) Neither a letter of reprimand nor requiring additional training is disciplinary action for purposes of section 143.089(a)(2). *See* Attorney General Opinion JC-0257 (2000). We therefore conclude that this third internal affairs file may not be placed in the police officer's civil service file but rather must also be withheld in its entirety pursuant to section 143.089(g).

Because you have not submitted to this office a representative sample of records that are required to be placed in a civil service file, we must address these files generally. As noted above, information in a police officer's civil service file must be released to the public unless one or more of the Public Information Act's exceptions to disclosure apply. You contend that either section 552.103 or 552.108 of the Government Code may except some of these files from required public disclosure. However, you have not demonstrated the applicability of either of these exceptions to any specific civil service records. We therefore conclude that none of the requested records may be withheld pursuant to either section 552.103 or 552.108 of the Government Code. Consequently, all such records must be released.

Finally, we note that under section 143.089(a)(2), the civil service file "must contain *any letter, memorandum, or document* relating to . . . any misconduct . . ." The director of civil service is required to include in the civil service file all documents created during an investigation of conduct that resulted in disciplinary action against an officer. Consequently, all records pertaining to disciplinary action coming within the ambit of the current request must be released to the requestor except to the extent the information is deemed confidential by law. *See* Gov. Code § 552.352 (release of confidential information constitutes criminal offense).

The second request seeks all records pertaining to the murder of a named individual. You inform us that the related criminal prosecution concerned two defendants: an adult, who had been tried and convicted prior to the department's receipt of the records request, and an individual who was a juvenile at the time of the offense and had not yet been tried. In a telephone conversation on February 15, 2001, you informed a member of our staff that the juvenile had been certified as an adult under section 54.02 of the Family Code and has been convicted of the murder since the date you requested a decision from this office. You

contend that the records at issue are excepted from public disclosure pursuant to sections 552.103 and 552.108 of the Government Code.

Although the attorney general will not ordinarily raise an exception that might apply but that the governmental body has failed to claim, *see* Open Records Decision No. 325 at 1 (1982), we will raise section 552.101 of the Government Code, which protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," because the release of confidential information could impair the rights of third parties and because the improper release of confidential information constitutes a misdemeanor. *See* Government Code § 552.352. Section 58.007(c) of the Family Code provides in pertinent part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Subsection (d), referenced above, pertains to the transfer of Texas Youth Commission records to a central state or federal depository for adult records and is not applicable here. Because the records pertaining to the murder investigation concern a "child" for purposes of the Family Code, we conclude that records of the murder investigation must be withheld in their entirety pursuant to section 58.007(c) of the Family Code. *See* Fam. Code § 51.02(2) (defining "child").

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).


If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael J. Burns  
Assistant Attorney General  
Open Records Division

MJB/RWP/seg

Ref: ID# 144514

Encl. Submitted documents

cc: Ms. Rachel Horton  
Arlington Morning News  
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Arlington, Texas 76011-4991  
(w/o enclosures)